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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

PARIS KURT RAGLAND, JR.,

Defendant and Appellant.

A153476

(Marin County  
Super. Ct. No. SC194558)

Defendant Paris Kurt Ragland, Jr., appeals his convictions on six felony counts of identity theft (Pen. Code,<sup>1</sup> § 530.5, subd. (a)), contending that, under our holding in *People v. Chatman* (2019) 33 Cal.App.5th 60, review granted and briefing deferred June 26, 2019, S255235 (*Chatman*), statutory revisions made by Proposition 47 require those offenses to be charged either as misdemeanor shoplifting (§ 459.5) or petty theft (§ 490.2). He also contends that we must remand to allow the trial court to exercise its newly conferred discretion to strike certain firearm enhancements, to consider whether to stay or decline to impose various fees and assessments, and to correct the abstract of judgment. The Attorney General concedes each point but the first. As to that, the Attorney General points out that the issue is before the Supreme Court in *People v. Jimenez* (2018) 22 Cal.App.5th 1282, review granted July 25, 2018, S249397 (*Jimenez*), and that he “continue[s] to believe” that convictions under section 530.5 are not subject to reduction under Proposition 47. Unless and until the Supreme Court should so rule, we adhere to the view that convictions under section 530.5 are subject to such reduction, for the reasons stated in *Chatman*. We shall

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<sup>1</sup> All undesignated statutory references are to the Penal Code.

thus reduce the identify-theft convictions to misdemeanors under section 459.5 and remand for the trial court to address the other issues noted above.

### **Factual and Procedural History**

Defendant was convicted on 12 counts based on two series of events in September 2015 in which he robbed people of their credit cards and then used the cards—or aided his girlfriend in using them—to buy goods in various stores. The first six counts involved the robbery and attempted robbery of two victims on September 2 (counts 1–2; §§ 211, 664, 187) and the subsequent use of one victim’s credit card at four convenience or grocery stores to buy items worth less than \$950 (counts 3–6; § 530.5, subd. (a)). The final six counts involved a September 9 robbery and assault of a third victim (counts 7–9 and 12; § 211, § 245, subds. (a)(2) & (a)(4), § 243, subd. (d)) and aiding the use of that person’s credit card at two stores to buy items worth less than \$950 (counts 10–11; § 530.5, subd. (a)). The information alleged facts supporting several sentencing enhancements.<sup>2</sup>

After a jury found defendant guilty on all counts and found true the enhancement allegations, the court sentenced him to 30 years 4 months in prison.<sup>3</sup> The court imposed a \$300 restitution fine and a stayed \$300 parole-revocation fine (§§ 1202.4, 1202.45), a \$480 court security fee (§ 1465.8), and a \$360 criminal conviction fee (Gov. Code, § 70373). Defendant timely appealed.

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<sup>2</sup> With regard to the robbery and assault charges, the enhancements included personal use of a firearm (§ 12022.53, subds. (b), (g); § 12022.5, subd. (a)) and, as to the third victim, personal infliction of great bodily injury (§ 12022.7, subd. (a)); as to all counts, defendant was charged with having served two prior prison terms (§ 667.5, subd. (b)).

<sup>3</sup> The sentence comprises an upper term of five years, along with firearm and injury enhancements that total 13 years, on count 7 (robbery of the third victim); consecutive terms of one year and of eight months, respectively, on counts 1–2 (robbery of the first victim and attempted robbery of the second), with a firearm enhancement of three years four months on each of those counts; and consecutive terms of eight months each (one-third the midterm) on the six identity-theft counts (counts 3–6 and 10–11; § 530.5, subd. (a)). The court stayed the sentences on the remaining counts under section 654 and struck defendant’s priors.

## Discussion

### 1. *The identity-theft convictions must be reduced to misdemeanors.*

Section 530.5, subdivision (a) proscribes “identify theft” committed by using another’s personal identifying information to obtain credit or goods. In *Chatman*, *supra*, 33 Cal.App.5th 60, this court noted the split among the Courts of Appeal as to whether section 459.5, subdivision (b), enacted by Proposition 47, bars charging a defendant with identity theft under section 530.5, subdivision (a) if the defendant’s conduct constitutes “shoplifting” as defined in section 459.5. (*Chatman*, *supra*, at p. 62.) We followed *Jimenez*, *supra*, 22 Cal.App.5th 1282, review granted July 25, 2018, S249397, and held that it does. The Supreme Court subsequently granted review and deferred briefing in *Chatman*, pending resolution of *Jimenez*.

The Attorney General states his continued position that convictions for violation of section 530.5 “are not eligible for reduction to misdemeanor theft pursuant to Proposition 47.” The Attorney General briefly reiterates key points supported by opinions disagreeing with *Jimenez* (e.g., *People v. Liu* (2018) 21 Cal.App.5th 143, 152, review granted June 13, 2018, and judgment vacated on other grounds Nov. 21, 2019, S248130). These contentions were addressed in our *Chatman* opinion, and the Attorney General does not identify any new arguments or developments in the law that were not considered in *Chatman*.<sup>4</sup> We thus adhere to the view stated in *Chatman* and hold that the identity theft convictions must be reduced to misdemeanor violations of section 459.5, subdivision (b).

### 2. *The case must be remanded for the trial court to make discretionary sentencing determinations and corrections to the abstract of judgment.*

The Attorney General correctly acknowledges that the case must be remanded to allow the trial court to exercise its discretion under recently enacted Senate Bill No. 620 (Stats. 2017, ch. 682, §§ 1–2, pp. 1–4) to determine whether to strike the firearm

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<sup>4</sup> The Attorney General does cite *People v. Weir* (2019) 33 Cal.App.5th 868, review granted June 26, 2019, S255212, which the Fourth Appellate District issued 11 days after we issued our opinion in *Chatman*, and which comes to the opposite conclusion. The Attorney General does not suggest that *Weir* contains any arguments or authority not considered in *Chatman*.

enhancements (*People v. Zamora* (2019) 35 Cal.App.5th 200, 206–208), to determine whether to refrain from imposing or to stay execution of various fees and assessments in light of *People v. Dueñas* (2019) 30 Cal.App.5th 1157 and subsequent opinions addressing the issues raised in *Dueñas* (including our decision in *People v. Johnson* (2019) 35 Cal.App.5th 134), and to correct the abstract of judgment in several respects. The corrected abstract should indicate that (a) the court imposed one third of the middle term on each subordinate term of the sentence, (b) the terms imposed on counts 8, 9, and 12 are stayed pursuant to section 654, without deeming the terms either “concurrent” or “consecutive,” (c) defendant received 934 (rather than 915) days’ presentence credit, (d) the prior-prison-term enhancements were stricken (not “stayed”), and (e) the stayed term on count 8 was 3 (not 4) years.

### **Disposition**

The convictions on counts 1–2, 7–9, and 12 are affirmed. The convictions on counts 3–6 and 10–11 for violation of Penal Code section 530.5, subdivision (a) are reduced to misdemeanor convictions for violation of Penal Code section 459.5, subdivision (a). The matter is remanded for resentencing, with the direction to the court to exercise its discretion on the matters specified above and to correct the abstract of judgment as specified above.

POLLAK, P. J.

WE CONCUR:

TUCHER, J.  
BROWN, J.